Supreme Court, U.S.
FILED
JUN 9 1988
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-1609

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

GRIFFIN AND BRAND OF MCALLEN, INC., *et al.*,
Petitioners,

v.

MARGARITO REYES, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

---

RESPONDENTS' BRIEF IN OPPOSITION TO CERTIORARI

DAVID G. HALL
Counsel of Record

VIVIANA S. PATINO
TEXAS RURAL LEGAL AID, INC.
259 South Texas
Weslaco, Texas 78596
(512) 968-6574

Counsel for Respondents

PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. (202) 347-8203

INDEX

	Page
STATEMENT OF THE CASE	1
REASON FOR DENYING CERTIORARI	4
A. Certiorari Should be Denied Because Defendants Seek An Advisory Opinion From This Court	4
B. Certiorari Should be Denied Because The Court of Appeals Decision Does Not Conflict With Decisions Of Other Courts of Appeals Or This Court	5
1. The Fifth Circuit Applied The Proper Standard In Issuing The Writ Of Mandamus	5
2. Immigration Status Is Not Relevant To The Issues In This Case	7
C. Petitioners Seek Review Of Determinations Of No Precedential Value	9
CONCLUSION	10
APPENDIX	1a

TABLE OF AUTHORITIES

CASES:	Page
Anderson v. Redman, 474 F.Supp. 511 (D.Del. 1979)	7
Beliz v. W.H. McLeod & Sons Packing Co., 765 F.2d 1317 (5th Cir. 1985)	7
City of Las Vegas v. Foley, 747 F.2d 1294 (9th Cir. 1984)	5
Goldblum v. National Broadcasting Corporation, 584 F.2d 904 (9th Cir. 1978)	6
Harper & Row Publishers, Inc. v. Decker, 423 F.2d 487 (7th Cir. 1970), *aff'd.* 400 U.S. 348 (1971)	6
In re Reyes, 814 F.2d 168 (5th Cir. 1987)	1,3
Iowa Beef Processors, Inc. v. Bagley, 601 F.2d 949 (8th Cir. 1979)	5
Marshall v. Presidio Valley Farms, Inc., 512 F. Supp. 1195 (W.D. Tex. 1981)	8
Montelongo v. Meese, 803 F.2d 1341 (5th Cir. 1986)	8
Plyler v. Doe, 457 U.S. 202 (1982)	8
Schlagenhauf v. Holder, 379 U.S. 104 (1964)	5
Six Mexican Workers v. Arizona Citrus Growers, 641 F.Supp 259 (D. Ariz. 1986)	8
Sure-Tan, Inc. v. NLRB, 467 U.S. 883 (1984)	9
United States Board of Parole v. Merhige, 487 F.2d 25 (4th Cir. 1973), *cert. denied*, 417 U.S. 918 (1974)	6
Usery v. Ritter, 547 F.2d 528 (10th Cir. 1977)	6
Winters v. Travia, 495 F.2d 839 (2d Cir. 1974)	6

Table of Authorities Continued

	Page
STATUTES:	
29 U.S.C. §§1801, *et seq.*	2
29 U.S.C. §1802 (8) (A)	7,9
29 U.S.C. §1802 (10) (A)	7,9
29 U.S.C. §1816	9
29 U.S.C. §§201, *et seq.*	2
29 U.S.C. §203 (e) (1)	8
42 U.S.C. §§2996, *et seq.*	2
TEXT:	
Wright and Miller, Federal Practice and Procedure: Civil §2006 (1970)	

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

No. 87-1609

GRIFFIN AND BRAND OF MCALLEN, INC., *et al.*,
Petitioners,

v.

MARGARITO REYES, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

---

RESPONDENTS' BRIEF IN OPPOSITION TO CERTIORARI

Respondents respectfully request that this Court deny the petition for writ of certiorari seeking review of the decision of the United States Court of Appeals for the Fifth Circuit entered on March 30, 1987. That opinion is reported at 814 F.2d 168 (5th Cir. 1987); rehearing was denied on June 16, 1987. The opinion of the district court is unreported. (Pet. App. at 323-325).

STATEMENT OF THE CASE

This matter involves the issuance of a writ of mandamus by the Fifth Circuit Court of Appeals to the

district court judge in *Margarito Reyes, et al. v. Griffin and Brand of McAllen, Inc., et al.*, No. B-85-412 (S.D. Tex. Brownsville Div.) (Hinojosa, J.). In that case, twenty-one farm laborers seek to redress alleged violations of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. §§1801, *et seq.* ("AWPA"), and the Fair Labor Standards Act, 29 U.S.C. §§201, *et seq.* ("FLSA"), and breach of an employment contract under Texas law. Plaintiffs are represented by Texas Rural Legal Aid, Inc. ("TRLA"), a Legal Services Corporation recipient within the meaning of the Legal Services Corporation Act, 42 U.S.C. §§2996, *et seq.* ("LSCA"). During pretrial discovery Defendants, a Texas vegetable producer that employed Plaintiffs and four of its farm labor contractors, submitted discovery requests to Plaintiffs. Interrogatory No. 6 of those requests sought information regarding the immigration and citizenship status of Defendants' former employees.[1] Plaintiffs objected to answering this request and Defendants moved to compel. The sole ground for Defendants' motion to compel was that "the matters inquired into are not privileged and are reasonably calculated to lead to discovery of admissible evidence."[2]

---

[1] Interrogatory No. 6 provides, "Are you a citizen of the United States? If so, were you born in the United States? If so, please state where you were born and your birth date. If you are a naturalized citizen of the United States, please state where and when you became a citizen of the United States. If you are not a citizen of the United States, please state your immigration status."

[2] At no point in the district court proceedings did Defendants state how the requested information was relevant to the case.

On July 28, 1986, the district court entered a written order requiring the Plaintiff farm workers, "to fully respond to Defendant's Interrogatory Number 6, concerning each Plaintiff's immigration status." Plaintiffs requested that the court reconsider its ruling, but by order dated October 3, 1986, the workers' motion for reconsideration was denied. On November 4, 1986, Plaintiffs sought a writ of mandamus from the United States Court of Appeals for the Fifth Circuit to direct the district court to withdraw its order compelling discovery. On March 30, 1987, the Fifth Circuit Court of Appeals granted the writ of mandamus, "directing the district court to withdraw that portion of its discovery order requiring petitioners to answer questions concerning citizenship and alienage, including alienage status as documented or undocumented." *In Re Reyes*, 814 F.2d 168, 171 (5th Cir. 1987); Pet. App. at 11. Defendants' petition for rehearing was denied on June 16, 1987. (Pet. App. at 17, 18).

Defendants then filed their petition for writ of certiorari. Subsequently, Defendants and Plaintiffs stipulated to an "Agreed Final Order" which was entered by the district court on March 30, 1988. A copy of that order is attached hereto as Appendix A. Pursuant to that order, Defendants agreed,

> to pay to each Plaintiff the sum of ONE THOUSAND AND NO/100 DOLLARS ($1000.00), in full and final settlement of all claims by Plaintiffs against Defendants that arise out of, or are based on, any of the matters alleged in the complaint . . .

"Agreed Final Order" at 1-2. The order recited that seventeen of the twenty-one Plaintiffs had accepted

this settlement and dismissed their claims with prejudice. *Id.* at 2. The order also stated,

> 5. The remaining Plaintiffs, Rafael Cardenas, Jr., Juan Guel Palacios, Abraham Barbosa, Sr. and Cristina Barbosa, remain as active litigants pending a decision by the United States Supreme Court in the action filed by Defendants with such court. Upon a determination by the United States Supreme Court, Defendants will seek dismissal of this cause as to those Plaintiffs who have not contacted Plaintiffs' attorney and accepted or rejected the settlement offer contained herein.

Id. at 2. One of these four remaining Plaintiffs recently came forward to accept the settlement, the others have not been in contact with their attorney in over a year. In addition to the above "Agreed Final Order," Defendants have filed a motion to dismiss the remaining Plaintiffs for failure to make themselves available for deposition, despite having been ordered to do so by the district court.

REASONS FOR DENYING THE PETITION FOR CERTIORARI

A. Certiorari Should be Denied Because Defendants Seek An Advisory Opinion From This Court

As the above statement of facts makes clear, Defendants no longer have an interest in the immigration status of the Plaintiffs in this action, if they ever had such an interest, because they have entered into the "Agreed Final Order" to settle the lawsuit. Defendants continue to pursue their petition for certiorari in an apparent attempt to obtain an advi-

sory opinion from this Court as to the correctness of the district court's order compelling discovery. This Court does not sit to issue advisory opinions and it should decline to do so in this case.

B. Certiorari Should Be Denied Because The Court Of Appeals Decision Does Not Conflict With Decisions Of Other Courts of Appeals Or This Court.

The extraordinary circumstances that counsel review by writ of certiorari have not been satisfied in this case. Defendants allege that the decision of the Fifth Circuit "conflicts with the decisions of other federal courts of appeals and this Court on the same matter. . ." (Pet. at 2). However, the employers never articulate how the decision below conflicts with the decisions of the other circuit courts or of this Court.

1. The Fifth Circuit Applied The Proper Standard In Issuing The Writ Of Mandamus

Defendants contend that the Fifth Circuit erred in holding that the discovery dispute in this case met the legal standards for issuance of a writ of mandamus. However, the courts of appeals have frequently used mandamus to vacate orders compelling discovery where, as here, the discovery at issue is irrelevant and involves privileged information or information of a sensitive and personal nature. *See, e.g., Schlagenhauf v. Holder*, 379 U.S. 104 (1964) (district court's order compelling a physical examination amounted to a usurpation of power); *City of Las Vegas v. Foley*, 747 F.2d 1294 (9th Cir. 1984) (writ granted to protect city officials from disclosing mental process in enacting ordinance); *Iowa Beef Processors, Inc. v. Bagley*, 601 F.2d 949, 953-954 (8th Cir. 1979), *cert. denied*, 441 U.S. 907 (1979) (mandamus granted to protect general interests in trade secrets not necessarily rising to the

level of a privilege; writ vacated on other grounds at rehearing); *Goldblum v. National Broadcasting Corporation*, 584 F.2d 904 (9th Cir. 1978) (mandamus appropriate to avoid production of privileged material); *Usery v. Ritter*, 547 F.2d 528 (10th Cir. 1977) (writ issued to vacate order compelling disclosure of identity of employee/informer in FLSA case, due to danger of possible retaliation); *Winters v. Travia*, 495 F.2d 839 (2nd Cir. 1974) (writ issued to protect Christian Scientist from physical examination); *United States Board of Parole v. Merhige*, 487 F.2d 25 (4th Cir. 1973), *cert. denied*, 417 U.S. 918 (1974) (writ barred intrusion into records of the Board of Parole); *Harper & Row Publishers, Inc. v. Decker*, 423 F.2d 487 (7th Cir. 1970), *aff'd.*, 400 U.S. 348 (1971) (writ issued to vacate discovery order which would have infringed on attorney-client privilege); *see generally*, Wright and Miller, *Fed.Prac. & Pro.*: Civil §2006 (1970).

The Fifth Circuit's decision to issue a writ of mandamus to protect the Plaintiffs from discovery into their immigration status was well within the standards for the exercise of mandamus jurisdiction discussed in the above cases. Immigration status is a highly sensitive and personal matter; discovery into it could well intimidate farm workers from asserting their rights under the Fair Labor Standards Act (FLSA) and the Migrant and Seasonal Agricultural Worker Protection Act (AWPA), to the detriment not only of those workers, but the public at large which has an interest in ensuring that those statutes are enforced.[3] Moreover, as set forth below, immigration status is wholly irrelevant to the issues in this case.

---

[3] Farm workers who attempt to assert their rights are already

2. Immigration Status Is Not Relevant To The Issues In This Case

Defendants argue that Plaintiffs' immigration status is relevant to two general issues: (1) Plaintiffs' status as migrant or seasonal farm workers for purposes of AWPA, and (2) their right to the protections of AWPA and FLSA if they are undocumented aliens.[4]

As for the first issue, Plaintiffs' status as migrant or seasonal agricultural workers turns on whether they were "required to be absent overnight from [their] permanent place of residence." 29 U.S.C. §1802 (8)(A).[5] Plaintiffs have never objected to discovery concerning this issue, such as where they claim to

---

subject to a "general background of fear and intimidation caused by the widespread practice of retaliation against those who complain about violations." *Beliz v. W.H.McLeod & Sons Packing Co.*, 765 F.2d 1317, 1332 (5th Cir. 1985). Inquiry into immigration status would only compound this fear and intimidation.

[4] Defendants concede that the Legal Services Corporation Act, 42 U.S.C. § 2996e(b)(1)(B), deprives the district court of jurisdiction to consider the propriety of Plaintiffs' representation by a Legal Services Corporation grantee. *See, e.g., Anderson v. Redman*, 474 F.Supp. 511, 520 (D.Del. 1979).

[5] AWPA defines a "migrant agricultural worker" as "an individual who is employed in agricultural employment of a seasonal or other temporary nature, and who is required to be absent overnight from his permanent place of residence." 29 U.S.C. §1802(8)(A). A seasonal agricultural worker is an individual who is not required to be absent overnight from his permanent place of residence. 29 U.S.C. §1802(10)(A). The AWPA provides somewhat different protections to migrant workers as opposed to seasonal workers.

permanently reside, their intent to remain there, or where they were living at the time they performed work for Defendants. But neither immigration status nor citizenship are relevant to the question of residence. *Plyler v. Doe*, 457 U.S. 202, 227 n.22 (1982).

As for the second issue, the Fifth Circuit correctly found that "it is well established that the protection of the [FLSA] are applicable to citizens and aliens alike and whether the alien is documented or undocumented is irrelevant . . . The same thing is true with respect to claiming the benefits of the AWPA." *In Re Reyes*, 814 F.2d at 170. *See, e.g., Marshall v. Presidio Valley Farms, Inc.*, 512 F.Supp. 1195 (W.D. Tex. 1981) (FLSA minimum wage award to undocumented farm workers); *Montelongo v. Meese*, 803 F.2d 1341, 1352 n.17 (5th Cir. 1986) (damage award to farm workers regardless of immigration status under predecessor statute to AWPA); *Six Mexican Workers v. Arizona Citrus Growers*, 641 F.Supp. 259, 269 (D. Ariz. 1986) (same).

That undocumented workers are entitled to the protections of FLSA and AWPA is apparent from the language of those statutes. FLSA provides protection to "employees". An employee is defined as "*any individual* employed by an employer" subject to certain enumerated exceptions. 29 U.S.C. §203(e)(1) (emphasis added). Since undocumented aliens are not among the listed exceptions, they plainly come within the broad statutory definition of "employee." Similarly, AWPA extends its coverage to "*any individual* who engages in agricultural employment of a seasonal or other temporary nature . . ." without reference to the individ-

ual's immigration status. 29 U.S.C. §§1802(8)(A) and 1802(10)(A) (emphasis added).[6] The language in these two labor protective statutes is, thus, indistinguishable from the language of the National Labor Relations Act which this Court has found to cover undocumented aliens. *Sure-Tan, Inc. v. N.L.R.B.*, 467 U.S. 883, 891-92 (1984). Coverage of undocumented aliens also advances the remedial purposes of FLSA and AWPA in the same way such coverage advances the purposes of the NLRA. *Id.* at 892. Nowhere in Defendants' petition for certiorari do Defendants cite authority for the proposition that undocumented workers are not covered by AWPA and FLSA, let alone any conflict in the circuits on this issue.

Because the information sought through Defendants' request would not lead to the discovery of admissible evidence, the court of appeals properly barred inquiry into Plaintiffs' immigration or citizenship status. The decision of the court of appeals that Plaintiffs' immigration or citizenship status was not relevant to any issues in litigation in no way conflicts with decisions by other courts of appeals or decisions by this Court.

C. Petitioners Seek Review Of Determinations Of No Precedential Value

The issues raised by Defendants' petition for certiorari are of little importance to anyone other

---

[6] AWPA does prohibit farm labor contractors from knowingly hiring undocumented aliens. 29 U.S.C. §1816. A ban on hiring undocumented aliens and a requirement that they be afforded the protections of the Act are not inconsistent. Both provisions ensure that domestic farm workers are not adversely affected by competition from undocumented aliens working under substandard conditions.

than the litigants in this case. Defendants do not challenge the legal standards relied upon by the Fifth Circuit in issuing mandamus, nor do they ask this Court to define the appropriate legal standards for mandamus. All defendants challenge is the application of established standards to the particular facts of this case. A decision by this Court that the Fifth Circuit correctly or incorrectly applied the standards for granting mandamus in this case is a highly fact-bound question which would provide little or no guidance to other litigants or to the courts of appeals on the proper exercise of mandamus jurisdiction. Because it would serve no useful purpose for this Court to grant certiorari, it should decline to do so.

CONCLUSION

For the foregoing reasons the petition for writ of certiorari to review the decision of the United States Court of Appeals for the Fifth Circuit should be denied.

Respectfully Submitted,

DAVID G. HALL
Counsel of Record

VIVIANA S. PATINO
TEXAS RURAL LEGAL AID, INC.
Farm Workers Division
259 South Texas Blvd.
Weslaco, Texas 78596

Counsel for Respondents

APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
McALLEN DIVISION

MARGARITO REYES, *et. al.* *Plaintiffs,*	)	
vs.	)	Civil Action
	)	No. M-B-85-412
GRIFFIN & BRAND OF MCALLEN, INC. DANIEL TORRES, ALFREDO CANTU BENITO BAZAN and GUADALUPE SALDIVAR *Defendants.*	)	

AGREED FINAL ORDER

WHEREAS Plaintiffs commenced this action against Defendants alleging violations of the Fair Labor Standards Act, 29 U.S.C. §§201, *et seq.* and the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. §§1801, *et seq.* and breach of contract;

WHEREAS Defendants filed an answer denying any violations of said acts or contract;

WHEREAS Plaintiffs and Defendants wish to settle the action without litigation or trial and lay to rest all claims and controversies asserted therein, and all other claims that could be based on or arise out of any of the matters alleged in the complaint, between and among the parties;

IT IS THEREFORE STIPULATED, CONSENTED TO AND AGREED, by and among the undersigned as follows:

1. Defendants agree, without admitting the validity of Plaintiffs' allegations and in fact, continuing to deny such allegations, to pay to each Plaintiff the sum of ONE

THOUSAND AND NO/100 DOLLARS ($1,000.00), in full and final settlement of all claims by Plaintiffs against Defendants that arise out of, or are based on, any of the matters alleged in the complaint and to pay Plaintiffs' litigation expenses of $10,453.34 to Texas Rural Legal Aid, Inc.

2. The following Plaintiffs have accepted Defendants' offer: Margarito Reyes, Enrique Alanis, Jesus Alanis Gonzales, Rafael Cardenas, Sr., Santos Carrizales, Bernardo Cervantes, Esteban Hernandez, Juan Hernandez, Andres Olivares, Abraham Rivera, Jose Solis, Heberto Valdez, Alfonso Vargas, Pedro Vargas, Juan Lopez, Juan Jose Nunez, Enrique Diaz and Frumencio Torres Trigo.

3. The above named Plaintiffs agree to individually execute and deliver to Defendants full and final releases upon payment to each Plaintiff of the above amount.

4. As to the above named Plaintiffs, this action is dismissed with prejudice.

5. The remaining Plaintiffs, Rafael Cardenas, Jr., Juan Guel Palacios, Abraham Barbosa, Sr. and Cristina Barbosa, remain as active litigants pending a decision by the United States Supreme Court in the action filed by Defendants with such court. Upon a determination by the United States Supreme Court, Defendants will seek dismissal of this cause as to those Plaintiffs who have not contacted Plaintiffs' attorney and accepted or rejected the settlement offer contained herein.

6. Except as indicated in paragraph 1 herein, the parties shall bear their respective costs of suit.

7. This agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns. This agreement sets forth the entire terms of the settlement between the parties hereto with respect to the subject matter hereof and its supersedes any and all agreements and understandings, if any, prior hereto.

Approved this 30th day of March, 1988 at McAllen, Texas.

/s/ _____
United States District Judge

Agreed as to Form and Substance:

/s/ VIVIANA S. PATINO
VIVIANA S. PATINO
Attorney In Charge For Plaintiffs
Admission ID No. 1496
TEXAS RURAL LEGAL AID, INC.
1220 North Stanton Street
El Paso, Texas 79902
(915) 544-4421

TRUE COPY I CERTIFY
ATTEST;
JESSE E. CLARK, Clerk

By _____
Deputy Clerk

/s/ DONALD W. ALLEE
DONALD W. ALLEE
Attorney In Charge For Defendants
Admission ID No. 2738
ALLEE & GARCIA
101 North 10th Street
Suite C
Edinburg, Texas 78539
(512) 383-0742